

MONTANA LEGISLATIVE HISTORY

Chapter 116 19 79

Bill H 184 S _____ Original bill & history ☒ c

H. Committee on Judiciary ^{r'}

Hearing Date(s) Jan 19 ☒ c

Jan 24 ☒ c

_____ ☐ c

_____ ☐ c

Date Out Jan 24 ☒ c

S. Committee on Judiciary ^{r'}

Hearing Date(s) Feb 23 ☒ c

_____ ☐ c

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_____ ☐ c

Feb 23 ☒

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

There are no subcommittee minutes.

CHAPTER NO. 116.

HOUSE BILL NO. 184

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 16, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill do pass as amended and be placed on Consent Calendar. Report adopted.
January 26, 1979	Printed and placed on members' desks.
January 30, 1979	Third reading Consent Calendar passed. Transmitted to second house.

IN THE SENATE

January 31, 1979	Introduced and referred to Committee on Judiciary.
February 27, 1979	Committee recommend bill be concurred in. Report adopted.
March 1, 1979	Second reading, concurred in.
March 5, 1979	Third reading, concurred in.

IN THE HOUSE

March 6, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 HOUSE BILL NO. 184
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE; AND
 7 REPEALING SECTIONS 95-1709 AND 95-2010, R.C.M. 1947."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 46-4-203, MCA, is amended to read:

11 "46-4-203. Subpoenaing of witnesses. A coroner may
 12 issue subpoenas for witnesses, returnable forthwith
 13 immediately or at such time and place as he may appoint
 14 designate, which may be served by any competent person. He
 15 must shall summon and examine as witnesses every a witness
 16 each person who, in his opinion or that of the jury, has any
 17 knowledge of the facts and may summon a surgeon or physician
 18 to inspect the body and give a professional opinion as to
 19 the cause of the death."

20 Section 2. Section 46-5-201, MCA, is amended to read:

21 "46-5-201. Search warrant defined. A "search warrant"
 22 is an order:

- 23 (1) in writing;
 24 (2) in the name of the state;
 25 (3) signed by a judge;

1 (4) particularly describing the things or places or
 2 person to be searched and the instruments, articles, or
 3 things or persons to be seized;

4 (5) directed to a peace officer commanding him to
 5 search for persons or personal property and bring them or it
 6 before the judge."

7 Section 3. Section 46-5-202, MCA, is amended to read:

8 "46-5-202. Grounds for search warrant. Any judge may
 9 issue a search warrant upon the written application of any
 10 person, made under oath or affirmation before the judge,
 11 which:

12 (1) states that an offense has been committed;

13 (2) states facts sufficient to show probable cause for
 14 issuance of the warrant;

15 (3) particularly describes the places or things or
 16 persons to be searched; and

17 (4) particularly describes the things or persons to be
 18 seized."

19 Section 4. Section 46-5-305, MCA, is amended to read:

20 "46-5-305. Disposition of unclaimed property. If
 21 property seized as evidence is not claimed within 6 months
 22 of completion of the case for which it was seized and if
 23 after proper inquiry the judge cannot ascertain or locate
 24 any person entitled to its possession, he must order the
 25 property to be sold by the sheriff. The proceeds from such

1 ~~the~~ sales after deduction of the costs of storage, and
2 preservation of the property, and ~~the sales~~ must be paid
3 into the county treasury."

4 Section 5. Section 46-6-203, MCA, is amended to read:

5 "46-6-203. Manner of arrest with a warrant. When
6 making an arrest by ~~virtue of~~ pursuant to a warrant, the a
7 peace officer making ~~the arrest~~ shall inform the person to
8 be arrested of ~~his~~ the officer's authority, of the intention
9 to arrest him, of the cause of the arrest, and of the fact
10 that a warrant has been issued for his arrest, except when
11 he flees or forcibly resists, before the ~~peace~~ officer making
12 the ~~arrest~~ has an opportunity ~~to~~ to inform him or when
13 the giving of such information will imperil the arrest. The
14 peace officer making ~~the arrest~~ need not have the warrant in
15 his possession at the time of the arrest, but after the
16 arrest ~~if the person arrested so requests~~ the warrant
17 shall ~~must~~ be shown to him ~~the person arrested~~ as soon as
18 practicable ~~if such person so requests~~."

19 Section 6. Section 46-9-203, MCA, is amended to read:

20 "46-9-203. Report to county attorney concerning drug
21 users. ~~It is hereby made the duty of~~ A city judges--and
22 magistrates judges, judges judges of a municipal courts courts,
23 ~~and--justices or~~ justice of the peace to ~~shall~~ report
24 immediately to the county attorney of the county wherein
25 their ~~courts--are--established--and--conducted~~ his court is

1 located any ~~and--if~~ knowledge or information acquired or
2 obtained by ~~said city judge magistrate judges of municipal~~
3 ~~courts--and--justices of the peace~~ him in a trial of causes a
4 cause or hearings ~~bearing~~ before them ~~him~~, which knowledge
5 or information shows or tends to show that any person is a
6 drug user or drug addict. If ~~said~~ such person ~~so shown to be~~
7 a ~~drug user or drug addict~~ is under arrest or liberated on
8 bail at the time ~~said~~ the knowledge or information is
9 acquired or obtained by ~~said city judge or magistrate judge~~
10 of ~~a--municipal court--or justice of the peace~~, ~~said~~ such
11 person shall ~~may~~ not be liberated, if under arrest, or ~~said~~
12 the bail discharged by ~~said~~ the judge--magistrate or
13 justice of the peace until ~~said~~ the report is made to the
14 county attorney ~~as provided herein~~."

15 Section 7. Section 46-9-311, MCA, is amended to read:

16 "46-9-311. Reduction, increase, revocation, or
17 substitution of bail. (1) Upon application by the state or
18 the defendant, the court before which the proceeding is
19 pending may increase or reduce the amount of bail,
20 substitute one bail for another, alter the conditions of the
21 bail, or revoke bail.

22 (2) Reasonable notice of such application must be
23 given to the opposing parties or their attorneys by the
24 applicant ~~after verdict of guilty and before judgment~~."

25 Section 8. Section 46-9-403, MCA, is amended to read:

"46-9-403. Qualifying property as bail. (1) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which ~~shall~~ **must** contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks ~~or and~~ bonds listed.

(2) (a) If the bail is real estate, the accused or sureties shall file a sworn schedule which ~~shall~~ **must** contain a legal description of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

(b) A certified copy of the schedule of real estate ~~shall~~ **must** be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state ~~shall~~ **have** ~~has~~ a lien on such real estate from the time the ~~copies are~~ **copy is** filed. The clerk and recorder shall enter, index, and record such ~~schedules~~ **the schedule** without requiring any fee.

(3) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state. ~~They each surety~~ must each be worth the amount specified in the undertaking, exclusive of property

exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification ~~be~~ is equivalent to that of sufficient bail.

(4) If the bail is a commercial surety bond, it may be ~~so--done~~ **executed** by any domestic or foreign surety company which is qualified to transact surety business in this state."

Section 9. Section 46-10-102, MCA, is amended to read:

"46-10-102. Waiver of preliminary examination. If the defendant waives ~~the~~ preliminary examination, the judge ~~justice~~ shall hold him to answer to the court having jurisdiction of the offense."

Section 10. Section 46-10-201, MCA, is amended to read:

"46-10-201. When examination not public. The judge ~~justice~~ may, in his discretion, and ~~must~~ upon the request of the defendant, exclude from the preliminary examination every person not officially associated with the case before the court."

Section 11. Section 46-10-202, MCA, is amended to read:

"46-10-202. Presentation of evidence. (1) The defendant ~~shall~~ **may** not enter a plea. The judge ~~justice~~

1 shall hear the evidence without unnecessary delay. All
2 witnesses ~~shall~~ **must** be examined in the presence of the
3 defendant. The defendant may cross-examine witnesses against
4 him and may introduce evidence in his own behalf.

5 (2) During the examination of any witness or when the
6 defendant is making a statement or testifying, the judge
7 ~~justice~~ may, and on the request of the defendant or state
8 shall, exclude all other witnesses. He may also cause the
9 witnesses to be kept separate and to be prevented from
10 communicating with each other until all are examined."

11 Section 12. Section 46-10-203, MCA, is amended to
12 read:

13 "46-10-203. Disposition of defendant. If from the
14 evidence it appears that there is probable cause to believe
15 that an offense has been committed by the defendant, the
16 judge ~~justice~~ shall hold him to answer to the court having
17 jurisdiction of the offense; otherwise, the judge ~~justice~~
18 shall discharge him."

19 Section 13. Section 46-10-204, MCA, is amended to
20 read:

21 "46-10-204. Record of examination. (1) The testimony
22 of each witness, in case ~~cases~~ of homicide, must be reduced
23 to writing as a deposition by a court-appointed
24 stenographer. In cases other than homicide, the testimony
25 of each witness ~~shall~~ **must** be taken by a court-appointed

1 stenographer upon demand by the county attorney, the
2 defendant, or the defendant's counsel.

3 (2) After concluding the proceeding, if the judge
4 ~~justice~~ holds the defendant to answer, he shall transmit
5 forthwith ~~immediately~~ to the clerk of the court having
6 jurisdiction of the offense all papers in the proceeding and
7 any bail taken by him."

8 Section 14. Section 46-13-203, MCA, is amended to
9 read:

10 "46-13-203. Change of place of trial. (1) The
11 defendant or the prosecution may move for a change of place
12 of trial on the ground that there exists in the county in
13 which the charge is pending such prejudice that a fair trial
14 cannot be had in such county. The motion ~~shall~~ **must** be made
15 at least 15 days prior to trial ~~unless except that, for if~~
16 good cause ~~is~~ shown, it may be made thereafter.

17 (2) The motion ~~shall~~ **must** be in writing and supported
18 by an affidavit which ~~shall~~ **must** state facts showing the
19 nature of the prejudice alleged. The defendant or the state
20 may file counteraffidavits. The court shall conduct a
21 hearing and determine the merits of the motion.

22 (3) If the court determines that there exists in the
23 county where ~~in which~~ the prosecution is pending such
24 prejudice that a fair trial cannot be had, it shall transfer
25 the cause to any other court of competent jurisdiction in

1 any county where in which a fair trial may be had."

2 Section 15. Section 46-14-302, MCA, is amended to
3 read:

4 "46-14-302. Discharge or release upon motion of
5 superintendent. (1) If the superintendent of Warm Springs
6 state hospital believes that a person committed to his
7 custody under 46-14-301 may be discharged or released on
8 condition without danger to himself or others, he shall make
9 application for the discharge or release of the person in a
10 report to the court by which the person was committed and
11 shall send a copy of the application and report to the
12 county attorney of the county from which the defendant was
13 committed.

14 (2) The court shall then appoint at least two
15 qualified psychiatrists to examine the person and to report
16 their opinion as to his mental condition within 60 days or a
17 longer period which the court determines to be necessary for
18 the purpose. To facilitate the examinations and the
19 proceedings thereon, the court may have the person confined
20 in any institution located near the place where the court
21 sits which may hereafter be designated by the superintendent
22 of Warm Springs state hospital as suitable for the temporary
23 detention of irresponsible persons.

24 (3) If the court is satisfied by the report filed
25 under subsection (1) of this section and the testimony of

1 the reporting psychiatrists which the court considers
2 necessary that the committed person may be discharged or
3 released on condition without danger to himself or others,
4 the court shall order his discharge or his release on
5 conditions which the court determines to be necessary.

6 (4) If the court is not satisfied, it shall promptly
7 order a hearing to determine whether the person may safely
8 be discharged or released. A hearing is considered a civil
9 proceeding, and the burden is upon the committed person to
10 prove by a preponderance of the evidence that he may safely
11 be discharged or released. According to the determination
12 of the court upon the hearing, the committed person shall
13 then be discharged or released on conditions which the court
14 determines to be necessary or shall be recommitted to the
15 custody of the superintendent of Warm Springs state
16 hospital, subject to discharge or release only in accordance
17 with the procedure ~~procedures~~ prescribed in this section and
18 46-14-301."

19 Section 16. Section 46-14-304, MCA, is amended to
20 read:

21 "46-14-304. Recommitment after conditional release. If
22 within 5 years after the conditional release of a committed
23 person the court determines after hearing evidence that the
24 conditions of release have not been fulfilled and that for
25 the safety of the person or for the safety of others his

1 conditional release should be revoked, the court shall
2 immediately order him to be recommitted to the
3 superintendent of Warm Springs state hospital, subject to
4 discharge or release only in accordance with the procedure
5 procedures prescribed in 46-14-302 and ~~46-15-303~~."

6 Section 17. Section 46-16-103, MCA, is amended to
7 read:

8 "46-16-103. Who decides questions of law and fact. (1)
9 All prosecutions deciding issues of fact shall ~~must~~ be tried
10 by the court and jury, except on a plea of guilty.

11 (2) Questions of law shall ~~must~~ be decided by the
12 court and questions of fact by the jury except ~~that~~ on a
13 trial for ~~to be~~ criminal defamation the jury shall determine
14 both questions of law and of fact. Questions of law and fact
15 shall ~~must~~ be decided by the court when a trial by jury is
16 waived under 46-16-102(2)."

17 Section 18. Section 46-16-503, MCA, is amended to
18 read:

19 "46-16-503. Conduct of jury after retirement -- advice
20 from court. (1) When the jury retires to consider its
21 verdict, an officer of the court shall ~~must~~ be appointed to
22 keep them ~~the jurors~~ together and to prevent conversations
23 between the jurors and others.

24 (2) After the jury has retired for deliberation, if
25 there be ~~is~~ any disagreement among them ~~the jurors~~ as to the

1 testimony or if they ~~the jurors~~ desire to be informed on any
2 point of law arising in the cause, they must require the
3 officer to conduct them into court. Upon--being ~~when the~~
4 ~~jurors are~~ brought into court, the information requested may
5 be given in the discretion of the court. If such information
6 is given, it must be given in the presence of the county
7 attorney and the defendant and his counsel."

8 Section 19. Section 46-16-702, MCA, is amended to
9 read:

10 "46-16-702. Motion for a new trial. (1) Following a
11 verdict or finding of guilty, the court may grant the
12 defendant a new trial if required in the interest of
13 justice.

14 (2) The motion for a new trial shall ~~must~~ be in
15 writing and shall ~~must~~ specify the grounds therefor. It
16 shall ~~must~~ be filed by the defendant within 30 days
17 following a verdict or finding of guilty. Reasonable notice
18 of the motion shall ~~must~~ be served on the state.

19 (3) On hearing the motion for a new trial, if
20 justified by law and the weight of the evidence, the court
21 may:

- 22 (a) deny the motion;
- 23 (b) grant a new trial; or
- 24 (c) modify or change the verdict or finding by finding
- 25 the defendant guilty of a lesser included crime offense or

1 finding the defendant not guilty."

2 Section 20. Section 46-17-311, MCA, is amended to
3 read:

4 "46-17-311. Appeal. (1) All cases on appeal from
5 justices' or city courts must be tried anew in the district
6 court and may be tried before a jury of six selected as
7 ~~provided--in--Title-25--chapter-7--part-2 in the same manner~~
8 ~~as a trial jury in a civil action except that the total~~
9 ~~number of jurors drawn shall be at least six plus the total~~
10 ~~number of peremptory challenges.~~

11 (2) The defendant may appeal to the district court by
12 giving written notice of his intention to appeal within 10
13 days after judgment.

14 (3) Within 30 days, the entire record of the justice's
15 or city court proceedings ~~shall~~ ~~must~~ be transferred to the
16 district court or the appeal ~~shall~~ ~~must~~ be dismissed. It is
17 the duty of the defendant to perfect the appeal."

18 Section 21. Section 46-18-201, MCA, is amended to
19 read:

20 "46-18-201. Sentences that may be imposed. (1)
21 Whenever a person has been found guilty of an offense upon a
22 verdict or a plea of guilty, the court may:

23 (a) defer imposition of sentence, excepting sentences
24 for driving under the influence of alcohol or drugs, for a
25 period not exceeding 1 year for any misdemeanor or for a

1 period not exceeding 3 years for any felony. The sentencing
2 judge may impose upon the defendant any reasonable
3 restrictions or conditions during the period of the deferred
4 imposition. Such reasonable restrictions or conditions may
5 include:

- 6 (i) jail base release;
- 7 (ii) jail time not exceeding 90 days;
- 8 (iii) conditions for probation;
- 9 (iv) restitution;
- 10 (v) any other reasonable conditions considered
11 necessary for rehabilitation or for the protection of
12 society; or
- 13 (vi) any combination of the above.

14 (b) suspend execution of sentence up to the maximum
15 sentence allowed for the particular offense. The sentencing
16 judge may impose on the defendant any reasonable
17 restrictions during the period of suspended sentence. Such
18 reasonable restrictions may include any of those listed in
19 subsections (1)(a)(i) through (1)(a)(vi).

- 20 ~~(i)--jail-base-release;~~
- 21 ~~(ii)--jail-time-not-exceeding-90-days;~~
- 22 ~~(iii)--conditions-for-probation;~~
- 23 ~~(iv)--restitution;~~
- 24 ~~(v)--any---other---reasonable---conditions---considered~~
25 ~~necessary--for--rehabilitation--or--for--the--protection--of~~

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1 ~~society;~~

2 ~~(vi) any combination of the above;~~

3 (c) impose a fine as provided by law for the offense;

4 (d) commit the defendant to a correctional institution

5 with or without a fine as provided by law for the offense;

6 (e) impose any combination of subsections (1)(b),

7 (1)(c), and (1)(d).

8 (2) If any restrictions or conditions imposed under
9 subsection (1)(a) or (1)(b) are violated, any elapsed time,
10 except jail time, shall ~~is~~ not be a credit against the
11 sentence unless the court orders otherwise.

12 (3) Except as provided in 46-18-222, the imposition or
13 execution of the first 2 years of a sentence of imprisonment
14 imposed under the following sections may not be deferred or
15 suspended: 45-5-102(2), 45-5-103(2), 45-5-202(2),
16 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3),
17 45-9-101(2), 45-9-102(3), and 45-9-103(2)."

18 Section 22. Section 46-18-202, MCA, is amended to
19 read:

20 "46-18-202. Additional restrictions on sentence. (1)
21 The district court may also impose any of the following
22 restrictions or conditions on the sentence provided for in
23 46-18-201 which it considers necessary to obtain the
24 objectives of rehabilitation and the protection of society:

25 (a) prohibit prohibition of the defendant-the-right-to

1 ~~hold defendant's holding~~ public office;

2 (b) prohibit ~~the defendant the right to own~~
3 prohibition of his owning or carry ~~carrying~~ a dangerous
4 weapon;

5 (c) prohibit restrictions on his freedom of
6 association;

7 (d) prohibit restrictions on his freedom of movement;

8 (e) any other limitation reasonably related to the
9 objectives of rehabilitation and the protection of society.

10 (2) Whenever the district court imposes a sentence of
11 imprisonment in the state prison for a term exceeding 1
12 years, the court may also impose the restriction that the
13 defendant be ineligible for parole and participation in the
14 prisoner furlough program while serving his term. If such a
15 restriction is to be imposed, the court shall state the
16 reasons for it in writing. If the court finds that the
17 restriction is necessary for the protection of society, it
18 shall impose the restriction as part of the sentence and the
19 judgment shall contain a statement of the reasons for the
20 restriction.

21 (3) The judge in a justice's, city, or municipal court
22 does not have the authority to restrict an individual's
23 rights as enumerated in subsections (1) and (2)."

24 Section 23. Section 46-18-401, MCA, is amended to
25 read:

1 "46-18-401. Merger of sentences. (1) Unless the judge
2 otherwise orders:

3 (a) when ~~whenever~~ a person serving a term of
4 commitment imposed by a court in this state is committed for
5 another offense, the shorter term or shorter remaining term
6 shall be merged in the other term except as provided in
7 subsection (5); and

8 (b) when ~~whenever~~ a person under suspended sentence or
9 on probation for an offense committed in this state is
10 sentenced for another offense, the period still to be served
11 on suspended sentence or probation shall be merged in any
12 new sentence of commitment or probation.

13 (2) The court merging the sentences shall ~~forthwith~~
14 immediately furnish each of the other courts and penal
15 institutions in which the defendant is confined under
16 sentence with authenticated copies of its sentence, which
17 ~~shall~~ must cite the sentences being merged.

18 (3) If an unexpired sentence is merged pursuant to
19 subsection (1), the court which imposed such sentence shall
20 modify it in accordance with the effect of the merger.

21 (4) Separate sentences of ~~for~~ two or more crimes
22 ~~offenses~~ shall run concurrently unless the court otherwise
23 orders.

24 (5) Except as provided in this subsection, when
25 ~~whenever~~ a prisoner is sentenced for an offense committed

1 while he was imprisoned in the state prison or while he was
2 released on parole or under the prisoner furlough program,
3 the new sentence runs consecutively with the remainder of
4 the original sentence. The prisoner starts serving the new
5 sentence when the original sentence has expired or when he
6 is released on parole under chapter 23, part 2, of this
7 title in regard to the original sentence, whichever is
8 sooner. In the latter case, the sentences run concurrently
9 from the time of his release on parole."

10 Section 24. Section 46-20-318, MCA, is amended to
11 read:

12 "46-20-318. Dismissal for failure to cause timely
13 transmission ~~--transmission at instance of respondent.~~ (1)
14 If the appellant ~~shall--fail~~ fails to cause timely
15 transmission of the record, any respondent may file a motion
16 in the supreme court to dismiss the appeal. The motion ~~shall~~
17 must be supported by:

18 (a) a certificate of the clerk of the district court
19 showing the date and substance of the judgment or order from
20 which the appeal was taken, the date on which the notice of
21 appeal was filed, ~~the expiration date on which the notice of~~
22 ~~appeal--was--filed,~~ and the expiration date of any order
23 extending the time for transmitting the records; and

24 (b) proof that 7 days' notice in writing has been
25 served on the appellant that application will be made for

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1 dismissal of the appeal.

2 (2) Instead of filing a motion to dismiss the appeal,
3 the respondent may cause the record to be transmitted and
4 may docket the appeal, in which event the appeal shall
5 proceed as if the appellant had caused it to be docketed."

6 Section 25. Section 46-22-201, MCA, is amended to
7 read:

8 "46-22-201. Application for writ. (1) Application for
9 the writ is made by petition signed either by the party for
10 whose relief it is intended or by some person in his behalf.
11 It must specify:

12 (a) that the person in whose behalf the writ is
13 applied for is unlawfully imprisoned or restrained of his
14 liberty;

15 (b) why the imprisonment or restraint is unlawful;

16 (c) ~~the place where~~ and the officer or person by whom
17 he is so confined or restrained ~~and the place wherey--naming~~
18 ~~att.~~

19 ~~(2) All the parties must be named~~ if they are known or
20 ~~describing them described~~ if they are not known.

21 ~~(2)(1)~~ The petition must be verified by the oath or
22 affirmation of the party making the application."

23 Section 26. Section 46-22-202, MCA, is amended to
24 read:

25 "46-22-202. By whom issued and before whom returnable.

1 The writ of habeas corpus may be granted:

2 (1) by the supreme court or any justice thereof upon
3 petition by or on behalf of any person restrained of his
4 liberty in this state. When so issued it may be made
5 returnable before the court or any justice thereof or before
6 any district court or judge thereof.

7 (2) by the ~~a~~ district courts ~~court~~ or a judge thereof
8 upon petition by or on behalf of any person restrained of
9 his liberty in their ~~the court's or judge's~~ respective
10 counties ~~district~~ or ~~districts~~ county."

11 Section 27. Section 46-23-108, MCA, is amended to
12 read:

13 "46-23-108. Records and reports -- confidentiality.
14 The department shall keep a record of the board's acts and
15 decisions available to the public. However, all social
16 records, including the presentence report, the preparole
17 report, and the supervision history obtained in the
18 discharge of official duty by the department, ~~shall be~~ ~~are~~
19 confidential and ~~shall~~ ~~may~~ not be disclosed directly or
20 indirectly to anyone other than the members of the board or
21 a judge. The board or a court may, in its discretion, when
22 the best interests or welfare of a particular defendant or
23 prisoner makes such action desirable or helpful, permit the
24 inspection of the report ~~social record~~ or any parts thereof
25 by the prisoner or his attorney."

Section 28. Section 46-23-217, MCA, is amended to read:

"46-23-217. Service of term for additional crime. Any A prisoner who commits a crime while at large upon or conditional release and who is convicted and sentenced therefor shall serve such sentence ~~concurrently with the terms under which he was released unless otherwise ordered by the court in sentencing for the new offense consecutively with the remainder of the original sentence as provided in 46-18-401.~~"

Section 29. Section 46-23-306, MCA, is amended to read:

"46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

(1) the names of all persons appearing before the board on behalf of the person ~~pardoned by seeking clemency from~~ the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing."

Section 30. Section 46-23-402, MCA, is amended to

read:

"46-23-402. Purpose of prisoner furlough program. (1)

The purpose and intent of this part is ~~are~~ to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase their such prisoners' responsibility to society;

(c) provide for the minimum hourly wage required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer to be paid to ~~and~~ convicts such prisoners while so employed;

(d) make it possible ~~that they may for them to~~ work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner furlough program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect

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- 1 the overall objectives set forth in this section."
- 2 Section 31. Repealer. Sections 95-1709 and 95-2010,
- 3 R.C.M. 1947, are repealed.

-end-

Judiciary COMMITTEE

46th __ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 184	relating to criminal procedure	1/16	Marks	Friday 19th	do pass-amend	1/24
HB 185	relating to contracts and other obligations	1/16	Marks	Friday 19th	do pass	1/24
HB 194	revise laws in title 1	1/16	Manuel	Friday 19th	do pass-amend	1/24
HB 203	adopt uniform enforcement of foreign judgments act	1/16	Anderson	Friday 19th	do pass-amend	1/24
HB 223	permit supervisory law enforcement personnel to control telephone to and from person holding hostages	1/17	Conroy	Monday 22nd	do pass-amend	1/24
HB 224	offense of custodial interference an individual taken from lawful custody to lawful custody - arrest	1/17	Conroy	Monday 22nd	do pass	1/22

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 19, 1979

The executive session was called to order by Chairman Scully following the regular meeting at 9:40 a.m. in Room 436 on Friday, January 19, 1979. All members were present with the exception of Representative Holmes, excused because of illness.

HOUSE BILL NO. 184:

Representative Keedy offered an amendment and explained his reasoning for it.

On page 4, line 5, strike sub-section (2) in its entirety. Insert, "If the court grants without amendment a petition filed alleging abuse, neglect or dependency for the purpose of obtaining permanent custody of a child with the right to consent to adoption the court shall make no order requiring the parent or guardian to pay any of the costs thereof." A discussion followed as to whether this would apply if they were taking the child away to a permanent situation, or in what situation it would apply. The motion carried with the vote unanimous.

Representative Rosenthal passed out copies of amendments prepared by the social services. Mr. Scully explained the amendments and what effect they would have. Then followed general discussion and questions about the financial burden as applied in the bill and the voluntary and involuntary placements. Feeling was divided as to what the intent of the bill was.

Representative Scully appointed a sub-committee to study the bill, meet with witnesses and gather more facts and present it to the full committee on Tuesday, the 23rd. Sub-committee members appointed are Representative Keyser, Chairman, and Representatives Keedy, Daily, and Rosenthal. Further action will be taken at that time.

HOUSE BILL NO. 172:

Representative Keyser moved to amend Page 4, following line 12, the addition of a repealer section, which had been inadvertently left off the bill. (attached) The motion carried with the vote unanimous.

Representative Keyser moved "do pass as amended". Representative Daily gave his objections to the bill, as did Representatives Teague, Day, and Kemmis. Talking in favor of the bill was Representatives Uhde, Keyse and Seifert. Most of the discussion centered around whether or not the cross-over vote would or could destroy the two party system.

Representative Scully told the committee about a phone call he had had concerning the Big Horn River and the possibility of its use for a coal slurry pipeline. He and Representative Day explained to the members about the water policy on the Yellowstone, what was included, etc.

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 24, 1979

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Following the regular meeting the committee went into executive session and took action on the following bills. The meeting was called to order by Chairman Scully at 9:00 a.m. in Room 436 on Wednesday, January 24, 1979. All members were present.

HOUSE BILL NO. 148:

Representative Keyser reported to the full committee the findings of the sub-committee and offered their recommendation. (copy attached) Representative Keyser moved the adoption of the committee recommendation and the motion carried with the vote unanimous.

Representative Keyser moved to table the bill, and Larry Weinburg will prepare a committee bill. The motion carried with the vote unanimous.

SENATE BILL NO. 4:

Mr. Weinburg reported to the committee on research he had been doing. The history did not give much information. He proposed a series of amendments.

Representative Kemmis moved to strike "satisfaction" and insert "discharge and release" wherever it appeared in the bill. The motion carried with the vote unanimous.

Representative Kemmis moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried since the vote was unanimous. The bill will go to the consent calendar.

HOUSE BILL NO. 184:

Representative Kemmis reminded the committee that this was the bill that revises the criminal procedure, both search a person and seize a person, which wording bothered him a great deal. He moved several clean-up amendments wherever the words "persons to be seized" appeared. The motion carried with the vote unanimous.

Representative Iverson moved "do pass as amended" and the motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous. It will go to the consent calendar.

HOUSE BILL NO. 194:

Mr. Weinberg reported on his investigation of affinity (about the 1st degree). Representative Scully explained about the relationships as determined in sub-section (2). It was suggested that on page 8, the section be repealed starting on line 18 and renumber. Representative Keyser moved this amendment and the motion carried with the vote unanimous.

January 24, 1925

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 184

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE; AND
REPEALING SECTIONS 95-1709 AND 95-2010, R.C.M. 1947."

Respectfully report as follows: That ~~We~~ unanimously recommend that HOUSE Bill No. 184

Introduced copy, be amended as follows:

1. Page 2, line 3.
Following: line 2
Insert: "or"
Following: "things"
Strike: ", or persons"
2. Page 2, line 5.
Strike: "persons or"
Strike: "them or"
3. Page 2, line 17.
Strike: "or persons"

AND AS AMENDED
DO PASS

A motion was made and passed unanimously to
place HOUSE BILL NO. 184 on the CONSENT CALENDAR

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary-Senate

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB-296	1/30/79	2/5/79	2/8/79	2/7/79					
SB-301	1/31/79	2/13/79	2/19/79			2/18/79			
SB-322	1/31/79	2/7/79	2/8/79		2/8/79				
SB-214	1/31/79	2/6/79	2/19/79			2/18/79			
SB-12	1/31/79	2/8/79	+ is note taken to (House) Senate						
HB-184	1/31/79	2/23/79	2/23/79				2/23/79		
HB-114	1/31/79	2/23/79	2/23/79					2/23/79	
HB-203	1/31/79	2/28/79	3/1/79						3/1/79
HB-223	1/31/79	2/28/79	3/6/79					3/1/79	
HB-225	1/31/79	2/28/79	2/28/79						
HB-226	1/31/79	2/28/79	2/28/79				2/28/79		
HB-229	1/31/79	3/1/79	3/2/79					3/1/79	
HB-242	1/31/79	3/1/79	3/2/79					3/1/79	
HB-270	1/31/79	3/2/79	3/3/79				3/8/79		
HB-308	1/31/79	3/2/79	3/2/79				3/2/79		
HB-250	2/1/79	3/1/79	3/6/79						3/6/79

Use a separate sheet for Senate, House Bills, and Resolutions.

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MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 23, 1979

The forty-fifth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, chairman, in room 331 of the capitol building on the above date at 9:33 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 184:

This is an act to generally revise and clarify the laws relating to criminal procedure. Joan Mayer from the Legislative Council offered an explanation of what this bill does. (See Exhibit A.) She also offered a handout. (See Exhibit B.)

There were no further proponents and no opponents. No questions were asked and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 185:

This is an act to generally revise and clarify the laws relating to contracts and other obligations, etc. Joan Mayer from the Legislative Council offered handouts in connection with the law on this bill. (See Exhibits C and D.) She went over the bill section by section.

Senator Towe moved that 28-1-1112 be stricken out of the repealer and the title. The motion carried unanimously.

Senator Towe moved that on page 7, line 3, the bill be amended by striking "contract debtor" and insert "maker". The motion carried.

Senator Towe moved that the bill be amended on page 4, lines 12 through 16 by reinserting all the stricken material. The motion carried with Senator Brown voting no.

Senator Towe moved that the bill be amended on page 10, line 19 following (1) insert "(a), (b), (c), and (d)". The motion carried unanimously after much discussion.

Senator Towe moved that the bill be amended on page 16, lines 5 through 12, by striking section 33 in its entirety. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 182:

This is an act to generally revise and clarify the laws relating to property. Bob Pyfer, staff attorney for the Legislative Council, gave an explanation of this bill.

Senator Towe moved that the bill be amended on page 7, line 9, following the word "interest" by inserting "or interest". The motion carried unanimously.

Senator Towe moved that the bill be amended on page 12, line 24 after "is" by inserting "presumed to be". The motion carried unanimously.

Senator Towe moved that the bill be concurred in as amended. The motion carried unanimously. Senator Turnage moved that this bill be placed on the consent calendar. The motion carried.

DISPOSITION OF HOUSE BILL 184:

A motion was made that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 194:

Joan Mayer from the Legislative Council went over this bill section by section. This is an act to generally revise the laws in Title 1, MCA, composed of general laws and definitions, etc.

Senator Towe moved that the bill be amended on page 2, lines 9 through 25, by striking section 3 in its entirety. The motion carried unanimously.

Senator Turnage moved that the bill be amended on page 2, line 25, by striking "proof or acknowledgment" and inserting "acknowledgments" and on page 3, line 1, by striking "or" and inserting "of". The motion carried unanimously.

Senator Towe moved that on page 9, line 19, following the word "swearing" the bill be amended by inserting "or affirming" and on line 21, after "swearing" inserting "or affirming". The motion carried unanimously.

Senator Turnage moved that the bill be concurred in as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned.

Everett R. Lensink
SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Collateral References

Amount of bail required in criminal action. 53 ALR 399.

Factors in fixing amount of bail in criminal cases. 72 ALR 801.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 ALR 24 945.

95-1111. Reduction, increase, revocation or substitution of bail. (a) Upon application by the state or the defendant the court before which the proceeding is pending may increase, or reduce the amount of bail, substitute one bail for another or alter the conditions of the bail, or revoke bail.

(b) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant after verdict of guilty and before judgment.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967.

Revised Commission Comment

Both the state and the defendant must have notice of any proposed change in the status of the bail and either side may move for a change in the bail. This applies to all stages of the proceedings.

Source: Illinois Code of Criminal Procedure, Chapter 38, section 110.6; and Revised Codes of Montana 1947, sections 94-8307 and 94-8507.

Amount of Bail

Court did not err in refusing defend-

ant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 496, 497, 498.

Collateral References

Bail $\approx$ 53; Habeas Corpus $\approx$ 33.

S. C.J.S. Bail $\S$ 42, 51 (1).

S. Am. Jur. 2d 822 et seq., Bail and Recognizance, $\S$ 68 et seq.

95-1112. How bail is to be furnished. Bail may be furnished by the defendant in any of the following ways:

(a) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash, stocks, or bonds, or any combination thereof approved by the judge; or

(b) By real estate situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail; or

(c) By written undertaking executed by the defendant and by two (2) sufficient sureties; or

(d) By a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of such surety company.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967.

Liberty Bonds as Bail

One depositing Liberty bonds as bail was estopped from claiming that their forfeiture was unauthorized, under former section stating that a "sum" might be deposited in lieu of giving bail, on theory that money only could be given when she had stipulated at the time bail was furnished that the bonds were substantially the equivalent of the amount fixed as bail in money or cash. *Kirschbaum v. Mayo*, 76 M 320, 329, 246 P 953.

Where a prisoner for whom bail was furnished by plaintiff by a deposit of

Liberty bonds was in court in the custody of the sheriff and released at once, the fact that a certificate of the deposit was not delivered to the officer as required by former section as authority for releasing him, was immaterial. *Kirschbaum v. Mayo*, 76 M 320, 329, 246 P 953.

Collateral References

Bail $\approx$ 73.

S. C.J.S. Bail $\S$ 52, 53.

S. Am. Jur. 2d 831, Bail and Recognizance, $\S$ 84-85.

Mandamus to compel approval of bonds by justice of the peace. 92 ALR 1211.

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DIANA S. DOWLING
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LC 0026

1979 Legislature
Code Commissioner Bill -- Summary

House Bill No. 184

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO
CRIMINAL PROCEDURE.

(This summary does not include discussion of routine form or
grammatical changes.)

Section 1. 46-4-203. Subpoenaing of witnesses. Gram-
matical changes.

Section 2. 46-5-201. Search warrant defined. In sub-
sections (4) and (5) clarified that a person can be searched or
seized (See 46-5-101 and 46-5-203(3).)

Section 3. 46-5-202. Grounds for search warrant. (See
Section 2 and 46-5-201.)

Section 4. 46-5-305. Disposition of unclaimed property.
Added "and the sale" to correct apparent oversight.

Section 5. 46-6-203. Manner of arrest with a warrant.
Deleted "making the arrest" in three places as redundant and
clarified use of pronouns.

Section 6. 46-9-203. Report to county attorney concerning
drug users. Rewrote to clarify and eliminate redundancies.

Section 7. 46-9-311. Reduction, increase, revocation, or
substitution of bail. In subsection (2) deleted "after verdict
and before judgment" to clarify that notice is required at all
stages of the proceedings (See Revised Commission Comment under
95-1111, R.C.M. 1947.)

Section 8. 46-9-403. Qualifying property as bail. In sub-
section (1) changed "or" to "and" for consistency with "a list
of the stocks and bonds", and in subsection (4) clarified
"so done".

Section 25. 46-22-201. Application for writ. Rewrote subsection (1)(c) to clarify.

Section 26. 46-22-202. By whom issued and before whom returnable. Corrected grammar in subsection (2).

Section 27. 46-23-108. Records and reports -- confidentiality. Clarified "report".

Section 28. 46-23-217. Service of term for additional crime. Corrected conflict with 46-18-401, which was amended in 1977.

Section 29. 46-23-306. Record of hearing. Clarified subsection (1).

Section 30. 46-23-402. Purpose of prisoner furlough program. In subsection (1)(c) changed "convicts" to "prisoners" and in subsection (2) changed "prisoner program" to "prisoner furlough program" for uniform terminology.

Section 31. Repealer. 95-1709 and 95-2010 are superseded by the Supreme Court's rules on disqualification of judges.

STANDING COMMITTEE REPORT

February 22 1972

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 124

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Respectfully report as follows: That House Bill No. 124

BE CONCURRED IN

DO-PASSxx *OK*

HOUSE BILL NO. 184

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE; AND REPEALING SECTIONS 95-1709 AND 95-2010, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-4-203, MCA, is amended to read:

"46-4-203. Subpoenaing of witnesses. A coroner may issue subpoenas for witnesses, returnable forthwith immediately or at such time and place as he may appoint designate, which may be served by any competent person. He must shall summon and examine as witnesses every a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death."

Section 2. Section 46-5-201, MCA, is amended to read:

"46-5-201. Search warrant defined. A "search warrant" is an order:

- (1) in writing;
- (2) in the name of the state;
- (3) signed by a judge;

(4) particularly describing the things or places or person to be searched and the instruments, articles, or things or persons to be seized;

(5) directed to a peace officer commanding him to search for persons or personal property and bring them or it before the judge."

Section 3. Section 46-5-202, MCA, is amended to read:

"46-5-202. Grounds for search warrant. Any judge may issue a search warrant upon the written application of any person, made under oath or affirmation before the judge, which:

- (1) states that an offense has been committed;
- (2) states facts sufficient to show probable cause for issuance of the warrant;
- (3) particularly describes the place, or things, or persons to be searched; and
- (4) particularly describes the things or persons to be seized."

Section 4. Section 46-5-305, MCA, is amended to read:

"46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from such

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1 the sale, after deduction of the costs of storage, and
2 preservation of the property, and the sale must be paid
3 into the county treasury."

4 Section 5. Section 46-6-203, MCA, is amended to read:

5 "46-6-203. Manner of arrest with a warrant. When
6 making an arrest by virtue of pursuant to a warrant, the a
7 peace officer making the arrest shall inform the person to
8 be arrested of his the officer's authority, of the intention
9 to arrest him, of the cause of the arrest, and of the fact
10 that a warrant has been issued for his arrest, except when
11 he flees or forcibly resists before the peace officer making
12 the arrest has an opportunity so to so inform him or when
13 the giving of such information will imperil the arrest. The
14 peace officer making the arrest need not have the warrant in
15 his possession at the time of the arrest, but after the
16 arrest, if the person arrested so requests, the warrant
17 shall must be shown to him the person arrested as soon as
18 practicable if such person so requests."

19 Section 6. Section 46-9-203, MCA, is amended to read:

20 "46-9-203. Report to county attorney concerning drug
21 users. It is hereby made the duty of A city judges and
22 magistrates judge, judges judge of a municipal courts court,
23 and justices or justice of the peace to shall report
24 immediately to the county attorney of the county wherein
25 their courts are established and conducted his court is

1 located any and all knowledge or information acquired or
2 obtained by said city judge magistrate judges of municipal
3 courts and justices of the peace him in a trial of causes a
4 cause or hearings hearing before them him, which knowledge
5 or information shows or tends to show that any person is a
6 drug user or drug addict. If said such person so shown to be
7 a drug user or drug addict is under arrest or liberated on
8 bail at the time said the knowledge or information is
9 acquired or obtained by said city judge or magistrate judge
10 of a municipal court or justice of the peace, said such
11 person shall may not be liberated, if under arrest, or said
12 the bail discharged by said the judge magistrate or
13 justice of the peace until said the report is made to the
14 county attorney as provided herein."

15 Section 7. Section 46-9-311, MCA, is amended to read:

16 "46-9-311. Reduction, increase, revocation, or
17 substitution of bail. (1) Upon application by the state or
18 the defendant, the court before which the proceeding is
19 pending may increase or reduce the amount of bail,
20 substitute one bail for another, alter the conditions of the
21 bail, or revoke bail.

22 (2) Reasonable notice of such application must be
23 given to the opposing parties or their attorneys by the
24 applicant after verdict of guilty and before judgment."

25 Section 8. Section 46-9-403, MCA, is amended to read:

"46-9-403. Qualifying property as bail. (1) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which ~~shall~~ must contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks or ~~and~~ bonds listed.

(2) (a) If the bail is real estate, the accused or sureties shall file a sworn schedule which ~~shall~~ must contain a legal description of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

(b) A certified copy of the schedule of real estate ~~shall~~ must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state ~~shall~~ have ~~has~~ a lien on such real estate from the time the ~~copies are~~ copy is filed. The clerk and recorder shall enter, index, and record such ~~schedules~~ the schedule without requiring any fee.

(3) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state. ~~They~~ Each surety must each be worth the amount specified in the undertaking, exclusive of property

exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification ~~be~~ is equivalent to that of sufficient bail.

(4) If the bail is a commercial surety bond, it may be ~~so--done~~ executed by any domestic or foreign surety company which is qualified to transact surety business in this state."

Section 9. Section 46-10-102, MCA, is amended to read:

"46-10-102. Waiver of preliminary examination. If the defendant waives ~~the~~ preliminary examination, the judge ~~justice~~ shall hold him to answer to the court having jurisdiction of the offense."

Section 10. Section 46-10-201, MCA, is amended to read:

"46-10-201. When examination not public. The judge ~~justice~~ may, in his discretion, and must, upon the request of the defendant, exclude from the preliminary examination every person not officially associated with the case before the court."

Section 11. Section 46-10-202, MCA, is amended to read:

"46-10-202. Presentation of evidence. (1) The defendant ~~shall~~ may not enter a plea. The judge ~~justice~~

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1 shall hear the evidence without unnecessary delay. All
2 witnesses ~~shall~~ must be examined in the presence of the
3 defendant. The defendant may cross-examine witnesses against
4 him and may introduce evidence in his own behalf.

5 (2) During the examination of any witness or when the
6 defendant is making a statement or testifying, the judge
7 ~~justice~~ may, and on the request of the defendant or state
8 shall, exclude all other witnesses. He may also cause the
9 witnesses to be kept separate and to be prevented from
10 communicating with each other until all are examined."

11 Section 12. Section 46-10-203, MCA, is amended to
12 read:

13 "46-10-203. Disposition of defendant. If from the
14 evidence it appears that there is probable cause to believe
15 that an offense has been committed by the defendant, the
16 judge ~~justice~~ shall hold him to answer to the court having
17 jurisdiction of the offense; otherwise, the judge ~~justice~~
18 shall discharge him."

19 Section 13. Section 46-10-204, MCA, is amended to
20 read:

21 "46-10-204. Record of examination. (1) The testimony
22 of each witness, in case ~~cases~~ of homicide, must be reduced
23 to writing as a deposition by a court-appointed
24 stenographer. In cases other than homicide, the testimony
25 of each witness ~~shall~~ must be taken by a court-appointed

1 stenographer upon demand by the county attorney, the
2 defendant, or the defendant's counsel.

3 (2) After concluding the proceeding, if the judge
4 ~~justice~~ holds the defendant to answer, he shall transmit
5 ~~forthwith immediately~~ to the clerk of the court having
6 jurisdiction of the offense all papers in the proceeding and
7 any bail taken by him."

8 Section 14. Section 46-13-203, MCA, is amended to
9 read:

10 "46-13-203. Change of place of trial. (1) The
11 defendant or the prosecution may move for a change of place
12 of trial on the ground that there exists in the county in
13 which the charge is pending such prejudice that a fair trial
14 cannot be had in such county. The motion ~~shall~~ must be made
15 at least 15 days prior to trial ~~unless except that~~, for if
16 good cause ~~is~~ shown, it may be made thereafter.

17 (2) The motion ~~shall~~ must be in writing and supported
18 by an affidavit which ~~shall~~ must state facts showing the
19 nature of the prejudice alleged. The defendant or the state
20 may file counteraffidavits. The court shall conduct a
21 hearing and determine the merits of the motion.

22 (3) If the court determines that there exists in the
23 county ~~where in which~~ the prosecution is pending such
24 prejudice that a fair trial cannot be had, it shall transfer
25 the cause to any other court of competent jurisdiction in

1 any county where ~~in which~~ a fair trial may be had."

2 Section 15. Section 46-14-302, MCA, is amended to
3 read:

4 "46-14-302. Discharge or release upon motion of
5 superintendent. (1) If the superintendent of Warm Springs
6 state hospital believes that a person committed to his
7 custody under 46-14-301 may be discharged or released on
8 condition without danger to himself or others, he shall make
9 application for the discharge or release of the person in a
10 report to the court by which the person was committed and
11 shall send a copy of the application and report to the
12 county attorney of the county from which the defendant was
13 committed.

14 (2) The court shall then appoint at least two
15 qualified psychiatrists to examine the person and to report
16 their opinion as to his mental condition within 60 days or a
17 longer period which the court determines to be necessary for
18 the purpose. To facilitate the examinations and the
19 proceedings thereon, the court may have the person confined
20 in any institution located near the place where the court
21 sits which may hereafter be designated by the superintendent
22 of Warm Springs state hospital as suitable for the temporary
23 detention of irresponsible persons.

24 (3) If the court is satisfied by the report filed
25 under subsection (1) of this section and the testimony of

1 the reporting psychiatrists which the court considers
2 necessary that the committed person may be discharged or
3 released on condition without danger to himself or others,
4 the court shall order his discharge or his release on
5 conditions which the court determines to be necessary.

6 (4) If the court is not satisfied, it shall promptly
7 order a hearing to determine whether the person may safely
8 be discharged or released. A hearing is considered a civil
9 proceeding, and the burden is upon the committed person to
10 prove by a preponderance of the evidence that he may safely
11 be discharged or released. According to the determination
12 of the court upon the hearing, the committed person shall
13 then be discharged or released on conditions which the court
14 determines to be necessary or shall be recommitted to the
15 custody of the superintendent of Warm Springs state
16 hospital, subject to discharge or release only in accordance
17 with the ~~proceedure~~ ~~procedures~~ prescribed in this section and
18 ~~46-14-303.~~"

19 Section 16. Section 46-14-304, MCA, is amended to
20 read:

21 "46-14-304. Recommitment after conditional release. If
22 within 5 years after the conditional release of a committed
23 person the court determines after hearing evidence that the
24 conditions of release have not been fulfilled and that for
25 the safety of the person or for the safety of others his

33

1 conditional release should be revoked, the court shall
 2 immediately order him to be recommitted to the
 3 superintendent of Warm Springs state hospital, subject to
 4 discharge or release only in accordance with the procedure
 5 procedures prescribed in 46-14-302 and ~~46-14-303~~."

6 Section 17. Section 46-16-103, MCA, is amended to
 7 read:

8 "46-16-103. Who decides questions of law and fact. (1)
 9 All prosecutions deciding issues of fact ~~shall~~ must be tried
 10 by the court and jury, except on a plea of guilty.

11 (2) Questions of law ~~shall~~ must be decided by the
 12 court and questions of fact by the jury except ~~that~~ on a
 13 trial for ~~the~~ criminal defamation the jury shall determine
 14 both questions of law and of fact. Questions of law and fact
 15 ~~shall~~ must be decided by the court when a trial by jury is
 16 waived under 46-16-102(2)."

17 Section 18. Section 46-16-503, MCA, is amended to
 18 read:

19 "46-16-503. Conduct of jury after retirement -- advice
 20 from court. (1) When the jury retires to consider its
 21 verdict, an officer of the court ~~shall~~ must be appointed to
 22 keep them ~~the jurors~~ together and to prevent conversations
 23 between the jurors and others.

24 (2) After the jury has retired for deliberation, if
 25 there be ~~is~~ any disagreement among them ~~the jurors~~ as to the

1 testimony or if they ~~the jurors~~ desire to be informed on any
 2 point of law arising in the cause, they must require the
 3 officer to conduct them into court. Upon--being ~~when~~ the
 4 ~~jurors are~~ brought into court, the information requested may
 5 be given in the discretion of the court. If such information
 6 is given, it must be given in the presence of the county
 7 attorney and the defendant and his counsel."

8 Section 19. Section 46-16-702, MCA, is amended to
 9 read:

10 "46-16-702. Motion for a new trial. (1) Following a
 11 verdict or finding of guilty, the court may grant the
 12 defendant a new trial if required in the interest of
 13 justice.

14 (2) The motion for a new trial ~~shall~~ must be in
 15 writing and ~~shall~~ must specify the grounds therefor. It
 16 ~~shall~~ must be filed by the defendant within 30 days
 17 following a verdict or finding of guilty. Reasonable notice
 18 of the motion ~~shall~~ must be served on the state.

19 (3) On hearing the motion for a new trial, if
 20 justified by law and the weight of the evidence, the court
 21 may:

22 (a) deny the motion;

23 (b) grant a new trial; or

24 (c) modify or change the verdict or finding by finding
 25 the defendant guilty of a lesser included crime offense or

finding the defendant not guilty."

Section 20. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal. (1) All cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected as provided ~~in title 25, chapter 7, part 2 in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.~~

(2) The defendant may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment.

(3) Within 30 days, the entire record of the justice's or city court proceedings ~~shall~~ ~~must~~ be transferred to the district court or the appeal ~~shall~~ ~~must~~ be dismissed. It is the duty of the defendant to perfect the appeal."

Section 21. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a

period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(vi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include ~~any of those listed in subsections (iii) through (iv).~~

~~(i) jail base release;~~

~~(ii) jail time not exceeding 90 days;~~

~~(iii) conditions for probation;~~

~~(iv) restitution;~~

~~(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of~~

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1 society;

2 ~~(vi)-any-combination-of-the-above;~~

3 (c) impose a fine as provided by law for the offense;

4 (d) commit the defendant to a correctional institution

5 with or without a fine as provided by law for the offense;

6 (e) impose any combination of subsections (1)(b),

7 (1)(c), and (1)(d).

8 (2) If any restrictions or conditions imposed under

9 subsection (1)(a) or (1)(b) are violated, any elapsed time,

10 except jail time, ~~shall~~ is not be a credit against the

11 sentence unless the court orders otherwise.

12 (3) Except as provided in 46-18-222, the imposition or

13 execution of the first 2 years of a sentence of imprisonment

14 imposed under the following sections may not be deferred or

15 suspended: 45-5-102(2), 45-5-103(2), 45-5-202(2),

16 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3),

17 45-9-101(2), 45-9-102(3), and 45-9-103(2)."

18 Section 22. Section 46-18-202, MCA, is amended to

19 read:

20 "46-18-202. Additional restrictions on sentence. (1)

21 The district court may also impose any of the following

22 restrictions or conditions on the sentence provided for in

23 46-18-201 which it considers necessary to obtain the

24 objectives of rehabilitation and the protection of society:

25 (a) ~~prohibit prohibition of~~ the defendant-the-right-to

1 ~~hold defendant's holding~~ public office;

2 (b) ~~prohibit---the---defendant---the---right---to---own~~

3 ~~prohibition of his owning~~ or ~~carry~~ carrying a dangerous

4 weapon;

5 (c) ~~prohibit~~ restrictions on his freedom of

6 association;

7 (d) ~~prohibit~~ restrictions on his freedom of movement;

8 (e) any other limitation reasonably related to the

9 objectives of rehabilitation and the protection of society.

10 (2) Whenever the district court imposes a sentence of

11 imprisonment in the state prison for a term exceeding 1

12 year, the court may also impose the restriction that the

13 defendant be ineligible for parole and participation in the

14 prisoner furlough program while serving his term. If such a

15 restriction is to be imposed, the court shall state the

16 reasons for it in writing. If the court finds that the

17 restriction is necessary for the protection of society, it

18 shall impose the restriction as part of the sentence and the

19 judgment shall contain a statement of the reasons for the

20 restriction.

21 (3) The judge in a justice's, city, or municipal court

22 does not have the authority to restrict an individual's

23 rights as enumerated in subsections (1) and (2)."

24 Section 23. Section 46-18-401, MCA, is amended to

25 read:

1 "46-18-401. Merger of sentences. (1) Unless the judge
2 otherwise orders:

3 (a) when ~~whenever~~ a person serving a term of
4 commitment imposed by a court in this state is committed for
5 another offense, the shorter term or shorter remaining term
6 shall be merged in the other term ~~except as provided in~~
7 ~~subsection 151~~; and

8 (b) when ~~whenever~~ a person under suspended sentence or
9 on probation for an offense committed in this state is
10 sentenced for another offense, the period still to be served
11 on suspended sentence or probation shall be merged in any
12 new sentence of commitment or probation.

13 (2) The court merging the sentences shall ~~forthwith~~
14 ~~immediately~~ furnish each of the other courts and penal
15 institutions in which the defendant is confined under
16 sentence with authenticated copies of its sentence, which
17 ~~shall must~~ cite the sentences being merged.

18 (3) If an unexpired sentence is merged pursuant to
19 subsection (1), the court which imposed such sentence shall
20 modify it in accordance with the effect of the merger.

21 (4) Separate sentences of ~~for~~ two or more crimes
22 ~~offenses~~ shall run concurrently unless the court otherwise
23 orders.

24 (5) Except as provided in this subsection, when
25 ~~whenever~~ a prisoner is sentenced for an offense committed

1 while he was imprisoned in the state prison or while he was
2 released on parole or under the prisoner furlough program,
3 the new sentence runs consecutively with the remainder of
4 the original sentence. The prisoner starts serving the new
5 sentence when the original sentence has expired or when he
6 is released on parole under chapter 23, part 2, of this
7 title in regard to the original sentence, whichever is
8 sooner. In the latter case, the sentences run concurrently
9 from the time of his release on parole."

10 Section 24. Section 46-20-318, MCA, is amended to
11 read:

12 "46-20-318. Dismissal for failure to cause timely
13 transmission ~~--transmission at instance of respondent.~~ (1)
14 If the appellant ~~shall--fail~~ fails to cause timely
15 transmission of the record, any respondent may file a motion
16 in the supreme court to dismiss the appeal. The motion ~~shall~~
17 ~~must~~ be supported by:

18 (a) a certificate of the clerk of the district court
19 showing the date and substance of the judgment or order from
20 which the appeal was taken, the date on which the notice of
21 appeal was filed, ~~the-expiration-date-on-which-the-notice-of~~
22 ~~appeal--was--filed~~, and the expiration date of any order
23 extending the time for transmitting the record; and

24 (b) proof that 7 days' notice in writing has been
25 served on the appellant that application will be made for

1 dismissal of the appeal.

2 (2) Instead of filing a motion to dismiss the appeal,
3 the respondent may cause the record to be transmitted and
4 may docket the appeal, in which event the appeal shall
5 proceed as if the appellant had caused it to be docketed."

6 Section 25. Section 46-22-201, MCA, is amended to
7 read:

8 "46-22-201. Application for writ. (1) Application for
9 the writ is made by petition signed either by the party for
10 whose relief it is intended or by some person in his behalf.
11 It must specify:

12 (a) that the person in whose behalf the writ is
13 applied for is unlawfully imprisoned or restrained of his
14 liberty;

15 (b) why the imprisonment or restraint is unlawful;

16 (c) ~~the place where and~~ the officer or person by whom
17 he is so confined or restrained ~~and the place wherev--naming~~
18 ~~att.~~

19 (2) ~~All~~ the parties ~~must be named~~ if they are known or
20 describing them described if they are not known.

21 (2)(1) The petition must be verified by the oath or
22 affirmation of the party making the application."

23 Section 26. Section 46-22-202, MCA, is amended to
24 read:

25 "46-22-202. By whom issued and before whom returnable.

1 The writ of habeas corpus may be granted:

2 (1) by the supreme court or any justice thereof upon
3 petition by or on behalf of any person restrained of his
4 liberty in this state. When so issued it may be made
5 returnable before the court or any justice thereof or before
6 any district court or judge thereof.

7 (2) by the ~~a district courts court~~ or a judge thereof
8 upon petition by or on behalf of any person restrained of
9 his liberty in ~~their the court's or judge's~~ respective
10 counties ~~district~~ or ~~districts county~~."

11 Section 27. Section 46-23-108, MCA, is amended to
12 read:

13 "46-23-108. Records and reports -- confidentiality.
14 The department shall keep a record of the board's acts and
15 decisions available to the public. However, all social
16 records, including the presentence report, the preparole
17 report, and the supervision history obtained in the
18 discharge of official duty by the department, ~~shall be~~ are
19 confidential and ~~shall may~~ not be disclosed directly or
20 indirectly to anyone other than the members of the board or
21 a judge. The board or a court may, in its discretion, when
22 the best interests or welfare of a particular defendant or
23 prisoner makes such action desirable or helpful, permit the
24 inspection of the report ~~social record~~ or any parts thereof
25 by the prisoner or his attorney."

1 Section 28. Section 46-23-217, MCA, is amended to
2 read:

3 "46-23-217. Service of term for additional crime. Any
4 A prisoner who commits a crime while at large upon ~~on~~ parole
5 or conditional release and who is convicted and sentenced
6 therefor shall serve such sentence ~~concurrently with the~~
7 ~~terms under which he was released unless otherwise ordered~~
8 ~~by the court in sentencing for the new offense consecutively~~
9 ~~with the remainder of the original sentence as provided in~~
10 ~~46-18-401."~~

11 Section 29. Section 46-23-306, MCA, is amended to
12 read:

13 "46-23-306. Record of hearing. At the hearing the
14 board must cause to be kept a record showing:

15 (1) the names of all persons appearing before the
16 board on behalf of the person pardoned by ~~seeking clemency~~
17 ~~from~~ the governor;

18 (2) the names of all persons appearing before the
19 board in opposition to the granting of the same;

20 (3) the testimony of all persons giving evidence
21 before the board;

22 (4) that the affidavit and return from the printer of
23 the publication of the notice and order of hearing was on
24 file prior to the hearing."

25 Section 30. Section 46-23-402, MCA, is amended to

1 read:

2 "46-23-402. Purpose of prisoner furlough program. (1)

3 The purpose and intent of this part ~~is~~ are to:

4 (a) establish a program for the rehabilitation,
5 education, and betterment of selected prisoners confined in
6 the state prison, placing the establishment, regulation,
7 guidance, and control of such program under the direction of
8 the department of institutions;

9 (b) increase ~~their~~ such prisoners' responsibility to
10 society;

11 (c) provide for the minimum hourly wage required by
12 law or the prevailing rate of pay for persons employed in
13 similar occupations by the same employer to be paid to ~~and~~
14 ~~convicts~~ such prisoners while so employed;

15 (d) make it possible ~~that they may for them to~~ work
16 gainfully to support their dependents in whole or in part
17 while serving their sentences, continue their education or
18 training, and at the same time fulfill the obligations of
19 the sentence of imprisonment imposed.

20 (2) The prisoner furlough program shall operate by
21 supplementing and not replacing established penal procedures
22 now or hereafter established by law and shall serve to
23 extend the limits of confinement for treatment as well as
24 jurisdictional purposes.

25 (3) This part is to be liberally construed to effect

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- 1 the overall objectives set forth in this section."
- 2 Section 31. Repealer. Sections 95-1709 and 95-2010,
- 3 R.C.M. 1947, are repealed.

-End-